

non sequitur. Moreover, as set forth in ¶¶678-79 below, to base a decision on the nature of a licensee's programming is also constitutionally proscribed.

609. In any event, the record reflects that NMTV's Portland station actually broadcasts 16 hours a week of programming that NMTV produces. (¶181 above.) The record also shows that the production of such programming was planned from the inception of NMTV's purchase of the station, long before anyone challenged the relationship between NMTV and TBN. (¶¶80-81, 181-82 above.) Even before NMTV consummated its purchase of the construction permit, the NMTV Board was pursuing the acquisition of local studio facilities, with Mrs. Duff and Pastor Espinoza authorizing greater expenditure than Dr. Crouch wanted to make. (¶¶109, 181, 214 above.) At the station's inception, Mrs. Duff recommended that Mr. McClellan be hired as Station Manager because of his experience in local program production and his record of incorporating minorities into local broadcasts. (¶¶79, 182 above.) Mrs. Duff then met with Mr. McClellan and directed him concerning NMTV's plans for local programming, including programming that would specifically focus on serving the needs of minorities. (¶¶80, 182 above.) Studio production commenced, furniture was purchased, and Mr. McClellan used the anticipation of local programming as a selling point to try to obtain cable carriage. (¶182 above.) The status of the local studio construction and plans to serve the minority community were considered at several NMTV Board meetings. (¶¶130, 141,

162, 181, 182 above.) Once the local studios were completed, Mr. McClellan implemented the direction he had received from Mrs. Duff and the Board's plans by developing local programming, including programming that features minority hosts, guests, and issues, and establishing outreach efforts toward the minority community. (§181, 141, 185 above.) The record also shows that the delay in NMTV's implementation of local programming was the direct result of the major problems it experienced in completing construction of the local studio. (§183 above.) Indeed, by the time the dust had literally settled, NMTV's commitment to local programming was such that it had invested over \$1.1 million in the construction of its Portland studio. (§184 above.)

610. Dr. Crouch did testify that, as NMTV's President, he has helped make or made programming decisions. (§185 above.) However, that snippet of testimony does not come close to establishing improper de facto control over NMTV's programming. That is especially so since the Commission approved Dr. Crouch to serve as NMTV's President with knowledge that the President's powers included the authority "to supervise, direct and control the business and the officers of the corporation." (§130 above.) Whatever little this piece of testimony says about the Section 310(d) issue in this case -- and it says hardly anything -- it is plain that Dr. Crouch's actions were conducted well within the scope of his de jure authority as the approved President of NMTV with authority to supervise, direct, and control the company's business. The Commission has clearly held that the

exercise of existing de jure authority granted by the corporation's bylaws is not, and indeed could not conceivably be, an unauthorized transfer of de facto control under Section 310(d). Turner Broadcasting System, Inc., 101 FCC 2d 843, 848 (1985). Moreover, of greater significance than the foregoing testimony, Dr. Crouch made clear that he has no role at all in deciding the scheduling of NMTV's local programs and what TBN programs are preempted for those broadcasts. (§185 above.)

611. Although NMTV did not produce its own programming during the time it owned the Odessa station, the record does not establish that Dr. Crouch, TBN, or TBN affiliates made that decision. Indeed, although Dr. Crouch did not want even to build or operate that station at all, Mrs. Duff and Pastor Espinoza outvoted him with the hope that, despite Dr. Crouch's contrary view, construction of a local studio and the production of local programming in that small market could be viable. (§§40-43 above.) After the station was built, Mrs. Duff tried to obtain the local cable carriage that she felt would enable the station to become financially able to construct a local studio and support the costs of local production. (§§49, 75 above.) Only after the efforts to obtain cable carriage failed and the station's revenues after its first half year of operations did not grow as much as Mrs. Duff had expected did she conclude that the station could not support a local studio and local production and should be sold to enable NMTV to move into a larger market. (§77 and note 24 above.) She had discussions

about the required costs and need for revenues with Pastor Espinoza, who had personal experience regarding the costs of local production and who also wanted NMTV's station to be self-sustaining, and he accepted her assessment. (§§78, 111 above.) Dr. Crouch never told or instructed Mrs. Duff not to proceed with local production in Odessa. (§186 above.)

612. Finally, the record clearly establishes that Dr. Crouch wanted NMTV to construct and broadcast TBN programs and telethons on NMTV's Houston low power station. (§§50-51, 53 above.) However, Mrs. Duff and Pastor Espinoza frustrated his desire by deciding to sell the construction permit instead. (§§52-53, 76, 111 above.) If Dr. Crouch, TBN, or TBN affiliates had control over NMTV's programming decisions, Dr. Crouch's desire to broadcast TBN programming and telethons over NMTV's low power facility would undoubtedly have been implemented. Taken as a whole, the record does not show that Dr. Crouch, TBN, or TBN's affiliates exercised de facto control over NMTV's programming.

(2) Personnel

613. The inquiry concerning NMTV's personnel affairs delved into three areas. They are control over NMTV's station staff, assistance that NMTV has received from personnel of TBN, and NMTV's personnel policies. With respect to each area, no violation of de facto control standards has occurred.

614. Under established precedent, the basic question regarding control of personnel involves the authority to hire and fire members of the station's staff. Tri-Counties Communications, Inc., 31 FCC 2d 83, 85 (1971) (the principal index of a transfer of control under Section 310 of the Act with respect to personnel is control of the station's hiring and firing policies); Phoenix Broadcasting Co., 44 FCC 2d 838, 840 (1973) (inquiry regarding personnel under Section 310 involves "the hiring and firing of [station] personnel"); J. Dominic Monahan, ¶605 supra (to the same effect); Stereo Broadcasters, Inc., 87 FCC 2d 87, 95 (1981) (the aspects of management most indicative of control include "control over station staff"); David A. Davila, supra, 6 FCC Rcd at 2899 (retention of ultimate authority to hire the general manager and key employees refutes allegation of unauthorized transfer of control); Daniel Forrestall, Receiver For All American Broadcasting Company, 8 FCC Rcd 884, 888 (Video Services 1993) (terminating general manager and hiring his replacement are affirmative actions refuting an alleged violation of Section 310).

615. For NMTV, the responsibility for conducting or supervising the hiring and firing of station personnel has been exercised by Mrs. Duff subject to the ultimate authority of the Board. (¶¶63, 79, 144, 166, 188, 189, 192, 193 above.) The Commission has recognized that organizations with self-perpetuating Boards like NMTV typically select individuals who perform the day-to-day operational functions of the station.

Transfer of Control of Certain Licensed Non-Stock Entities, 4 FCC Rcd 3403, 3405 (1989). Mrs. Duff, who is a minority and herself a member of NMTV's Board, is the officer responsible for supervising NMTV's affairs on a daily basis. (§55 above.) On some personnel matters the Board has given its direct approval, such as the decision to increase the station's staff by hiring a new production assistant, the establishment of minority training and hiring programs, the hiring of Mr. McClellan as Station Manager in Portland, the establishment of employee expense reimbursement policy, and the approval of Mr. McClellan's housing allowances. (§188 above.) In other matters Mrs. Duff has exercised her function as chief administrative officer directly, such as hiring the General Manager and Chief Engineer for the Odessa station and serving as his supervisor, hiring the entire initial staff of the Portland station herself, and exercising direct oversight of Mr. McClellan's performance as Station Manager and the hiring and firing of station staff. (§189 above.) Significantly, her performance of these responsibilities for NMTV is well beyond the scope of her duties as an employee of TBN, where she has no involvement at all in the hiring of the staffs at TBN stations and where TBN Station Managers report directly to the Chief of Staff, not to her. (§63 above.)^{93/}

^{93/} As discussed in §§637-48 below, applying Commission precedent to the record evidence establishes that Mrs. Duff functions as an individual member of NMTV's Board and not as an agent of TBN.

616. These facts establish that, with respect to the principal personnel issue regarding the hiring and firing of station staff, NMTV has in fact been a minority controlled company and no violation of Section 310(d) has occurred. That conclusion is not affected by the fact that on two occasions Mrs. Duff received employment references about technical engineering qualifications from members of TBN's engineering staff, Mr. Miller or Mr. Murray. (§§192, 193 above.) In the case of Mr. Fountain, Mr. Murray was his direct supervisor and it was entirely normal and responsible for Mrs. Duff to seek a reference from Mr. Murray before hiring Mr. Fountain as Chief Engineer. (§193 above.) In the case of both Messrs. Fountain and Prentice, the positions involved required substantial engineering qualifications in order to handle the on-site construction of new stations and then their day-to-day engineering requirements. (§§192, 193 above.) It therefore was entirely normal and responsible for Mrs. Duff, who lacks technical engineering knowledge herself, to obtain the assistance of Mr. Miller, who is an expert on building stations, to help her evaluate the applicants. (Id.) Indeed, as set forth in §§590-600 above, the very purpose of the Commission's expansion of the multiple ownership limits was to encourage joint ventures in which the experienced broadcaster would provide management and technical expertise in various areas including engineering. It thus would be totally inconsistent with the policy the Commission adopted to conclude that the

provision of engineering recommendations like these represented de facto control. They plainly do not.

617. The facts involved here are even more benign than those in David A. Davila, supra, in which officials of the network which not only provided programming and financing to the licensee, but also held stock pledges and options to acquire the station itself, interviewed the prospective Station Manager and other key employees before they were hired. 6 FCC Rcd at 2898, 2899. The Commission held that those circumstances did not constitute a violation of Section 310(d) because the licensee's responsible principal retained the ultimate authority to hire. 6 FCC Rcd at 2899. The same conclusion is applicable here, even more so because Davila did not involve a Commission policy that affirmatively encourages the provision of management and technical assistance to the licensee, and this case does not involve the provision of such assistance by a party that holds an ownership option on the licensee.

618. Concerning the personnel criterion, the Commission also has recognized that a violation of Section 310(d) does not occur where the licensee maintains its own staff of station personnel. See, e.g., David A. Davila, supra, 5 FCC Rcd at 5224-25, 5226 (network's interviewing of several key employees does not violate Section 310 when station employs a complete staff); Roy R. Russo, Esquire, 5 FCC Rcd 7586, 7587 and n. 9 (MMB 1990) (allegation of de facto control over personnel

rejected where licensee's station staff includes management, engineering, and support personnel); Peter D. O'Connell, Esquire, ¶607 supra (no violation of Section 310 where licensee's manager oversees day-to-day operations of the station and the station is responsible for all personnel used in its management and operation). Indeed, under current Commission policy, it is permissible for licensees to have their entire stations programmed, sold, and operated by another party without violating Section 310(d) as long as the licensee maintains a minimum staff of one management and one support employee. See, e.g., Mr. Michael R. Birdsill, 7 FCC Rcd 7891 (MMB 1992) (licensee requirements are met without violation of Section 310 by a staff of one management person and one part-time support person who can be shared with another licensee which programs and sells the station from a combined main studio); Brian M. Madden, Esquire, ¶607 supra (no violation of Section 310 where another party would provide all production personnel as long as the licensee employed a general manager, chief engineer, and technical personnel); Ms. Gisela Huberman, Esq., ¶607 supra (no violation of Section 310 as long as the licensee maintained a general manager or engineer to supervise the personnel supplied by another party). Here, NMTV has maintained station staffs that far exceed these requirements, including management, engineering, and support personnel. (¶¶190, 191 above.) Moreover, NMTV has maintained these staffs without anything like the intrusion of operating personnel from other parties on a

daily basis that has been permitted in the foregoing cases. In these circumstances, there has been no violation of Section 310(d) concerning control over station personnel.

619. For several reasons, the assistance that TBN has provided to NMTV does not change the conclusion that no de facto control of personnel has occurred. First, NMTV clearly retains the right to terminate the provision of this assistance whenever it wants. (§195 above.) In this regard, the law is clear that where, as here, the licensee retains the right to revoke delegations of functions it has made to other parties, such delegation "does not constitute a violation of Section 310[(d)] of the Communications Act." The Alabama Educational Television Commission, 33 FCC 2d 495, 508 (1972). Second, it is entirely proper under Commission policy for licensees to share the advice of consultants. Reexamination of the Commission's Cross-Interest Policy (Policy Statement), 4 FCC Rcd 2208 (1989).^{94/} Third, as previously indicated, the relationship between TBN and NMTV arises pursuant to a Commission policy that affirmatively encourages experienced broadcasters to provide assistance in areas such as engineering, law, accounting, and finance; indeed,

^{94/} Prior to 1989, the use of common consultants only raised questions under Commission policy when the full power stations involved served "substantially the same area" or "the same market." Reexamination of the Commission's Cross-Interest Policy (Notice of Inquiry), 2 FCC Rcd 3699 (1987). Neither of NMTV's full power stations in Odessa or Portland has served substantially the same area or the same market as TBN. As indicated, under current policy, even that restriction has been eliminated.

to "develop the property." (§§592-93 above.) Thus, the provision of this assistance is an implementation, not a violation, of Commission policy. Fourth, the assistance provided simply falls far short of control over NMTV's personnel.

620. For example, the record shows that TBN provides NMTV with services administering NMTV's personnel records, payroll, and accounting. (§§194, 216, 217, 219 above.) Those services are provided pursuant to the Business Services Agreement, which was executed January 2, 1991. (§§195, 216 above.) That Agreement, which is for a defined duration expiring on December 31, 1994, specifically provides that NMTV may terminate it at any time before expiration merely by giving 30 days notice. (*Id.*) Prior to that agreement, although TBN provided those services without a written agreement, NMTV had a corporate resolution which similarly contemplated that NMTV could terminate the arrangement whenever it gave TBN "further written notice" of its desire to do so. (*Id.*) Simply put, as Mrs. Duff testified, NMTV's Board has had the right to terminate these services "whenever we want." (§195 above.) Since NMTV at all times retained the right to terminate TBN's role in providing these services, they do not constitute a violation of Section 310(d). The Alabama Educational Television Commission, §619 *supra*. Moreover, in providing these services, TBN's personnel department has had no role in hiring, firing, or setting the salary for any NMTV employee (§194 above), and thus cannot be

found to have exercised control over NMTV's personnel. Tri-Counties Communications, Inc., ¶614 supra (no de facto control where third party did not control hiring and firing at the station); J. Dominic Monahan, Esquire, ¶605 supra (no violation of §310(d) where licensee retains the authority to hire, promote, and fire employees and has the right to terminate its agreement with a third party by giving notice); David A. Davila, ¶617 supra.^{95/}

621. NMTV likewise has had the right to terminate TBN's provision of legal and engineering assistance at any time. Moreover, not only is it entirely permissible under Commission policy for licensees to share the same consultants in matters such as these, Reexamination of the Commission's Cross-Interest Policy, ¶619 and n. 94 supra, but TBN's provision of such assistance comes squarely within the areas of management and technical expertise that the Commission specifically sought to encourage established broadcasters to provide to minorities "for an appreciable period of the business operation." (¶593 above.) The kind of assistance that TBN's nonprofit law and tax experts provided -- incorporation and obtaining tax exempt status, filing for a name change, advising on the indemnification of directors and obtaining errors and omissions insurance,

^{95/} Furthermore, it would not constitute de facto control even if TBN's personnel department had the legal right to nullify NMTV's personnel decisions, which it does not. Telephone Data and Systems, Inc. v. FCC, 19 F.3d 42, 50 (D.C. Cir. 1994) (legal right to nullify personnel decisions "does not constitute primary control over hiring and firing").

assisting with corporate minutes and maintaining a corporate book, writing a letter to help resolve a lease dispute, advising about the legal requirements for fulfilling fiduciary responsibilities and avoiding the loss of tax exempt status (§§196, 197 above) -- has little or no impact on NMTV's day-to-day broadcast operations. While NMTV benefits from such assistance, which was the Commission's goal in encouraging it, the public interest is not the slightest bit harmed by it. By no means does such assistance constitute control over NMTV's personnel.

622. In the case of the engineering assistance that has been provided, the public interest has substantially benefitted. In light of the rationale for expanding the multiple ownership rules to create an incentive that will enable established broadcasters to develop the properties in which they are joint venturers with minorities, it is fully consistent with Commission policy that TBN provided the technical expertise to enable NMTV's stations to be developed and constructed. As a result of that assistance, two full power stations which had lain fallow and unbuilt for years under the prior permittees were placed in service. (§32 above.) Numerous low power stations have also been constructed and service commenced. (§199, n. 39 above.) The Commission has long recognized the commencement of new service to be a primary benefit to the public interest. Pappas Telecasting (WHNS(TV)), 92 FCC 2d 1288, 1292-93 (Rev. Bd. 1983) (waiver granted based on "considerable importance" of initiating service from a station that had been dark for several years);

WSTE-TV, Inc., 75 FCC 2d 52, 63 (1979) (it is a substantial public interest consideration that a channel has not been activated for a substantial time). Accordingly, the fact that Mrs. Duff called upon the expertise of Mr. Miller to supervise the long delayed construction of the permits NMTV had acquired comports completely with the Commission's policy goals. (§§592-93 above.)

623. In Stereo Broadcasters, Inc., supra, the Commission specifically rejected the assertion that the provision of assistance concerning technical and legal matters constituted control and stated, "That these memoranda all refer to specific technical and legal problems greatly limits their probative value as evidence of control." 87 FCC 2d at 97-98. Rather, the Commission held, acting as a "watchdog" with respect to such technical and legal matters represents a consultancy, a role which "belies the conclusion that [the consultant] had ultimate control over station management." The legal and technical assistance that TBN provided to NMTV plainly does not constitute control over NMTV's personnel.^{96/}

624. The fact that TBN provided its assistance to NMTV at less than its own costs and often for free (§204 above) is

^{96/} In Stereo the provision of technical and legal consulting services was held inadequate to show that a licensee had retained control over station management. However, the same reasoning applies to a party that is charged with usurping such control. The provision of such services simply does not amount to control over the licensee's personnel.

irrelevant to the question of control over NMTV's personnel. Moreover, the provision of such technical expertise comports fully with the Commission's policy that one of the primary goals of a majority/minority joint venture under the minority expansion of the multiple ownership rules is to provide minority entities with management and technical expertise that is otherwise unavailable. (§§208-09, 592-600 above.) Furthermore, the record is overwhelming that the principals of TBN and NMTV considered the provision of this assistance to represent a donative act from one religious organization to another (§§205-07) and, as discussed below, it is constitutionally and statutorily impermissible for the government to pass judgment on the substance and propriety of such acts. (§§676-77 below.)

625. The HDO specified an inquiry regarding NMTV's personnel policies based on the perception that some of those policies were adopted at joint Board of Directors meetings with TBN and its affiliates. HDO ¶36. However, as the record now explains, while the minutes of those joint meetings were confusing because they did not identify the corporation to which the business transacted applied, NMTV in fact had no personnel at the time of those meetings and therefore adopted no personnel policies at them. (§§96, 210 above.) Moreover, the fact that the corporate meetings were held in combination does not in any event establish per se that one corporation controlled another. Furthermore, in addition to the fact that no NMTV personnel policies were adopted at the combined meetings, the record

reflects that since the time that NMTV has held Commission construction permits and licenses, which is the applicable time frame under Section 310(d) (§601 above), NMTV's meetings have not been held in conjunction with the business meetings of TBN and TBN's affiliates. (§211 above.) The fact that NMTV's Board of Directors has given its direct approval for a number of NMTV personnel matters establishes that NMTV retains the right to determine NMTV's basic policies concerning the operation of its stations, and that TBN has acquired no such right. Accordingly, no violation of Section 310(d) has occurred. Southwest Texas Public Broadcasting Council, §603 supra.^{97/}

626. Likewise, the fact that Mrs. Duff has determined to utilize some of TBN's policies which she considers to be applicable for NMTV (§212 above) does not signify that TBN has the right to set NMTV's policies. Mrs. Duff's decision to utilize certain TBN manuals and policies is benign for several reasons. First, the technical manuals which NMTV has utilized were made available to all stations that broadcast TBN program-

^{97/} The portions of the HDO which specify inquiry into whether TBN's affiliates have exercised de facto control over NMTV (HDO §§33, 36) apparently do so based on the joint Board meetings in which NMTV had participated with TBN's affiliates. Since those joint meetings terminated prior to the time NMTV acquired a construction permit, since the holding of combined meetings does not in any event establish improper control, and since the specific concern regarding the adoption of personnel policies at these meetings has been resolved as a misunderstanding based on the ambiguity of the minutes, the portions of the HDO concerning whether TBN's affiliates have exercised de facto control over NMTV have been resolved and no further consideration of that matter is warranted.

ming through affiliation agreements. (§§201, 212 above.) Such assistance from a network to its programming outlets is entirely natural, and the highly technical matters that the manuals address (such as cleaning amplifier cubicles, flushing water systems, and compliance with the Commission's technical rules) have no proper bearing on the issue of control over station personnel. In addition, the record reflects that the assistance which Mr. Miller has provided to NMTV on such other technical matters as glycol and strainer filters has been subject to the supervision of NMTV's station management and Mrs. Duff (§202 above), and similarly entails no improper control of personnel. Second, it is extremely common for different licensees that utilize the same counsel to have the same policies which were prepared by that counsel. That circumstance is entirely proper and does not signify that any entity has control over another. Third, to conclude that Mrs. Duff was required artificially to create different procedures, when she had materials available to her that she felt were appropriate for NMTV's needs, would contradict the fundamental underpinnings of the minority ownership policies. Those policies are concerned about the lack of financial resources available to minorities, yet such a conclusion would require a minority company to spend resources needlessly to create materials that already exist in acceptable form. The minority ownership policies encourage broadcasters to provide opportunities for minorities like Mrs. Duff to acquire high level experience in the industry, yet such a conclusion

would require Mrs. Duff to make a concerted effort to reject and ignore the information she has obtained as a result of her experience and to return instead to square one. The minority ownership policies encourage experienced majority broadcasters to provide management and technical expertise to minority licensees, yet such a conclusion would punish them for doing so and thereby discourage the provision of all such assistance and defeat the very purpose the Commission sought to achieve. In any event, the record does not establish that Mrs. Duff was pressured or even asked by TBN or anyone at TBN to adopt any policies for NMTV, a number of NMTV's policies also differ from TBN's, and NMTV retains the absolute right to adopt any personnel policies it desires. (§§188, 212, 213 above.) In these circumstances, no violation of Section 310(d) has occurred. Southwest Texas Public Broadcasting Council, ¶603 supra.

627. In short, no violation of Section 310(d) has occurred with respect to the basic question of the hiring and firing of NMTV's station staff, or any other matter. The record does not show that Dr. Crouch, TBN, or TBN's affiliates exercised de facto control over NMTV's personnel.

(3) Finances

628. Concerning NMTV's finances, the HDO noted that TBN provides accounting and bookkeeping services to NMTV, that TBN provided financing to NMTV with no formal notes or repayment

schedules, and that the people authorized to sign on NMTV's accounts are also TBN employees. HDO ¶35. Based on established precedents and the evidence that was adduced, these matters do not constitute de facto control of NMTV's finances.

629. Initially, the fact that TBN has provided financing to NMTV with no formal notes prior to January 1, 1993 (¶222 above) does not constitute de facto control. The starting point for assessing this matter is that, in addition to the provision of management and technical expertise, the entire thrust of the Commission's minority ownership policy is the recognition that minorities do not have access to the necessary financial capital and that the provision of such financing must be encouraged. (¶¶591-93 above.) To address that problem, the Commission created incentives to encourage established broadcasters to finance minority ownership. Of particular pertinence to this proceeding, the Commission created an incentive for established broadcasters like TBN to provide such financing by permitting them (a) to hold interests in additional stations under the multiple ownership rules, (b) to hold influential cognizable interests as officers and Board members of those licensees to protect their investments, and (c) to develop the broadcast properties of those licensees to protect their investments. (¶¶593-600.) In providing financing to NMTV, TBN is not exercising de facto control, it is directly implementing the Commission's policy.

630. Nor, for several reasons, do the terms on which TBN has provided its financing reflect de facto control. First, since the Commission's policy contemplated direct equity contributions as well as loans (§§593, 597, 599, 600 above), it would have been entirely proper for TBN to contribute funding to NMTV with no repayment obligation at all. Thus, the facts that TBN and NMTV maintained running records of the amounts advanced, reported those amounts to the Internal Revenue Service, and intended that NMTV would repay them (§222 above) evidence substantially more repayment intention than the Commission requires.

631. Second, in Southwest Texas Public Broadcasting Council, §603 supra, the Commission addressed a situation in which a party had provided substantial financing for a licensee's facilities, equipment, services, and operating overhead, and held that the provision of such financing did not constitute de facto control. 85 FCC 2d at 714. Moreover, even though the parties in Southwest Texas had entered into a contract contemplating payments from the licensee to its financial source, the Commission was undisturbed by the fact that the agreement was ignored and there was no record of any such payments having been made. Despite this dramatic departure from commercial business standards, which is certainly more extreme than the relationship between TBN and NMTV here, the Commission found no violation of Section 310(d). Similarly, in The Seven Hills Television Company, supra, the fact that a party had provided substantial

financial support to a licensee "for which no interest was ever paid" did not signify the exercise of de facto control. 2 FCC Rcd at 6881.

632. Third, the Commission has recognized that nonprofit broadcasters are "totally reliant on grants for financial support," and has held that "[t]his factor minimize(s) the significance of the financial participation of the licensee's delegate." La Star Cellular Telephone Company, 7 FCC Rcd 3762, 3767, n. 14 (1992), citing Southwest Texas Public Broadcasting Council, supra, 85 FCC 2d at 716. The Commission thus recognized that it would be erroneous to apply exacting commercial standards when evaluating the provision of financing between noncommercial entities. The facts that TBN did not require notes and interest from NMTV because (a) it was assisting another religious organization and (b) it felt protected because the Commission's policy permitted Dr. Crouch to serve on NMTV's Board and to have knowledge of its internal affairs (§§223-24 above), are fully consistent with those rulings and with the Commission's policy that specifically permits established broadcasters to hold influential Board positions to afford them a means of protection to encourage them to provide financing in the first instance.

633. And fourth, as Dr. Crouch observed (§224 above), the absence of formal notes and security provisions does not give TBN control over NMTV. If anything, it gives NMTV greater

control over TBN. Accordingly, TBN's provision of financing to NMTV provides no indication of de facto control whatsoever.^{98/}

634. TBN's provision of accounting and bookkeeping services to NMTV also does not constitute de facto control. As previously indicated (§619 above), pursuant to the Agreement to Provide Business Services and NMTV's earlier resolution, NMTV at all times has clearly retained the right to terminate the provision of that assistance whenever it wants. Accordingly, that delegation of functions "does not constitute a violation of Section 310[(d)] of the Communications Act." The Alabama Educational Television Commission, §619 supra. Moreover, at the time NMTV became a permittee in June 1987, the Commission had recently issued a series of cases which indicate that the kind of services that TBN provides to NMTV do not implicate questions of control. For example, on May 9, 1986, in Ft. Collins Telecasters, 60 RR 2d 1401, 1408 (Rev. Bd. 1986), the Review Board held that "be[ing] in charge of the Accounting Department" and "be[ing] responsible for paying bills and seeing that things are carried out when any kind of ... business is carried on" are not management and policy functions. Similarly, on November 26, 1986, in Pentecostal Revival Association, Incorporated, 1 FCC Rcd 842 (Rev. Bd. 1986), the Review Board held that bookkeeping simply does not qualify as a management control function.

^{98/} Moreover, as discussed in §676-77 below, it would be constitutionally and statutorily impermissible to premise a finding of de facto control on the terms by which one religious organization chose to provide financing to another.

Earlier, in High Sierra Broadcasting, Inc., 96 FCC 2d 423, 435 (Rev. Bd. 1983) the Review Board held that services provided in the form of paying bills are "essentially ministerial." Moreover, because NMTV is a nonprofit, tax exempt corporation, providing information to certified public accountants for the preparation of its tax returns (§219 above) does not have the same impact on its business as would be the case with a commercial entity since, for NMTV, the bottom line for taxes owed is always zero. Based on the foregoing case precedents and the fact that NMTV can terminate the business services agreement in its unbridled discretion, the services that TBN provides pursuant to that agreement do not constitute de facto control.

635. The fact that the authorized signatories on NMTV's accounts are TBN employees likewise accords with Commission policy and does not violate Section 310(d). First, NMTV's Board retains the right to change those signatories whenever it wants. (§195 above.) The Alabama Educational Television Commission, §619 supra. Second, those signatory arrangements are directly related to implementing the business services agreement (§217 above), which NMTV similarly can terminate at will and which in any event does not amount to de facto control. (§634 above.) Third, as shown in §§596-99 above, in permitting an established broadcaster to hold cognizable interests such as officerships and Director positions pursuant to the policy set forth in Section 73.3555, the Commission affirmatively contemplated that the established broadcaster would be in a position to perform

functions such as signing checks. In fact, Dr. Crouch's powers as President of NMTV, which the Commission approved when it granted the Odessa application, included the power to "super-vise, direct, and control the business and the officers of the corporation" and "the power to select and remove all agents and employees of the corporation." (§30 above; emphasis added.) Given the Commission's policy which contemplates that established broadcasters will have positions as officers and Directors and perform functions commensurate with those positions, and given the de jure authority that the Commission granted for Dr. Crouch to control and select the officers and all agents of NMTV, the fact that TBN employees have served as officers and agents of NMTV is not surprising, and is entirely legal and proper. Turner Broadcasting System, Inc., ¶610 supra.

636. In short, the fact that TBN has provided financing and financial services to NMTV is entirely consistent with the purposes of the minority expansion of the multiple ownership rules. Although TBN has provided financing and services, NMTV retains the right to control its finances. Accordingly, no violation of Section 310(d) has occurred with respect to NMTV's finances. Southwest Texas Public Broadcasting Council, ¶603 supra; The Seven Hills Television Company, supra, 2 FCC Rcd at 6880-81; The Alabama Educational Television Commission, ¶619 supra.

(4) Board of Directors

637. The HDO cited three reasons for seeking an inquiry into the control of NMTV's Board of Directors. HDO ¶33. First, it noted that two of NMTV's Directors, Dr. Crouch and Mrs. Duff, have been high ranking TBN employees who together constituted either a majority or half of NMTV's Board. (Id.) Second, it stated that Dr. Crouch is President of both TBN and NMTV and has the authority under NMTV's bylaws to "supervise, direct and control the business and officers of [NMTV]." (Id.) Third, it cited that for many years TBN and NMTV held joint board of directors meetings along with other TBN affiliates. (Id.)^{99/} After a searching evidentiary inquiry, based on both fact and law, the record does not establish that TBN controls NMTV's Board of Directors.

638. Initially, under existing precedent, there is nothing improper about Dr. Crouch serving as President of both corporations. In Southwest Texas Public Broadcasting Council, supra, the Commission found that no question of de facto control was raised by the fact that the licensee's President and General Manager was also the Director of the Communications Center for the party which provided most of the licensee's financial and

^{99/} The HDO's inquiry into whether TBN's affiliates controlled NMTV based on the joint Board meetings is discussed and resolved at ¶625 and n. 97 above. The following conclusions address what appears to be the HDO's primary basis for specifying the inquiry regarding control of NMTV's Board, i.e., the involvement of Dr. Crouch and Mrs. Duff on that Board.